91-483

Supreme Court, U.S.
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No. 91-_____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

PAUL DELO, Superintendent,
Potosi Correctional Center,

Petitioner,

vs.

KENNETH L. KENLEY,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Volume III

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1991

PAUL DELO, Superintendent, Potosi Correctional Center, Petitioner, vs. KENNETH L. KENLEY, Respondent.	)	No. 91-_____

INDEX TO PETITIONER'S APPENDIX

Volume III

13. "Amended Petition for Habeas Corpus," A-238
No. 88-2298-C-3, United States District Court for the Eastern District of Missouri, Eastern Division, **Kenneth L. Kenley v. Bill M. Armontrout**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT

KENNETH L. KENLEY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No 88-2298-C-3
	)	
BILL M. ARMONTROUT,	)	
	)	
Respondent.	)	

AMENDED PETITION FOR HABEAS CORPUS

Comes now petitioner Kenneth L. Kenley, by and through counsel[,] and files his Amended Petition for Habeas Corpus.

Introduction

Kenneth L. Kenley was convicted in two separate trials; in the first trial he was convicted of capital murder and in the second of three counts robbery 1st degree, two counts of kidnapping, two counts assault 1st degree and one count stealing a motor vehicle. In each trial, the petitioner was represented by Mr. Perry Rhew, Esq. In each trial, the state was represented by Mr. Mark A. Kennedy, Esq. The

Honorable John C. Holstein presided over both trials, and imposed sentence upon petitioner in both cases.

The instructions for filing a Petition for Writ of Habeas Corpus Corpus [sic] by a Person in State Custody state, in part: "(5) Only judgments entered by one court may be challenged in a single motion." As Judge Holstein entered judgments in both cases, petitioner's grounds for relief in both trials are included in a single motion. For the sake of clarity, however, petitioner's allegations with respect to the capital murder conviction are set out and included herein as Amended Petition and petitioner's allegations with respect to the remaining convictions are set out and included herein as Amended Petition A.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
_____ DIVISION

PETITION

1. Name the location of court which entered the judgment of conviction under attack: Thirty-Six Judicial Circuit, Poplar Bluff, Butler County, Missouri, Hon. J. Holstein

2. Date of judgment of conviction: verdicts June 15, 1984; sentencing July 13, 1984

3. Length of sentence: Death

4. Nature of offense involved (all counts): Capital Murder

5. What was your plea? (Check one)

   (a) Not guilty [X]
   (b) Guilty [_]
   (c) Nolo Contendere [_]

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____

6. Kind of trial: (Check one)

   (a) Jury [X]
   (b) Judge only [_]

7. Did you testify **at the trial?**

   Yes [_] No. [X]

8. Did you appeal from the judgment of conviction?

   Yes [X] No. [_]

9. If you did appeal, answer the following:

(a) Name of court: Missouri Supreme Court
(b) Result: Judgment of conviction and sentence affirmed
(c) Date of result: June 25, 1985, rehearing denied August 7, 1985[,] 693 S.W.2d 79 (Mo. banc 1985)
(d) Grounds raised: Other crimes evidence, murder for money aggravating circumstances, death qualified jury, sentence excessive
(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:
(1) Name of court: _____
(2) Result: _____
(3) Date of result and citation, if known: _____
(4) Grounds raised: _____
(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:
(1) Name of court: United States Supreme Court
(2) Result: certiorari denied
(3) Date of result and citation, if known: March 31, 1986; 475 U.S. 1098, 106 S.Ct. 1500, 89 L.Ed.2d 900
(4) Grounds raised: excessive sentence

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to the judgment in any court, state or federal? Yes [X] No. [_]

11. If your answer to 10 was "yes," give the

following information:

(a) (1) Name of court: Thirty-sixth Judicial Circuit, Butler County, Missouri

(2) Nature of proceeding: Motion for Post-Conviction Relief, Rule 27.26 M.R.Cr.P.

(3) Grounds raised: Ineffective assistance of counsel

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes [X] No. [_]

(5) Result: Post-conviction relief denied

(6) Date of result: December 2, 1986

(b) As to any second petition, application or motion[,] give the same information:

(1) Name of court: _____
(2) Nature of proceeding: _____
(3) Grounds raised: _____
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes [_] No. [_]
(5) Result: _____
(6) Date of result: _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc.
Yes [XX] No. [_]
(2) Second petition, etc.
Yes [_] No. [_]

(e) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not: _____

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* tne *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional

grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to his conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of

the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

A. Ground one: See attached pages

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

_____

B. Ground two: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

_____

C. Ground three: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

_____

D. Ground four: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

_____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or

federal, as to the judgment under attack?

Yes [_] No. [XX]

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: Perry Rhew, Office of the Prosecuting Attorney, P.O. Box 864, Kennett, Missouri 63857

(b) At arraignment and plea: Mr. Perry Rhew

(c) At trial: Mr. Perry Rhew

(d) At sentencing: Mr. Perry Rhew

(e) On appeal: Ms. C.J. Larkin, 209 B East Green Meadows, Columbia, Missouri 65203

(f) In any post-conviction proceeding: Mr. Gary Robbins, Office of the Public Defender, Courthouse, Jackson, Missouri 63755

(g) On appeal from any adverse ruling in a post-conviction proceeding: Mr. Henry B. Robertson, 1320 Market St., Room 62, St. Louis, Missouri 63103

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes [X] No. [_]

17. Do you have any future sentence to serve after you complete the sentence imposed by

the judgment under attack?

Yes [X] No. [_]

(a) Of so, give name and location of court which imposed sentence to be served in the future: Thirty-sixth Judicial Circuit, Poplar Bluff, Butler County, Mo.[,] Hon. J. Holstein

(b) Give date and length of the above sentence: January 14, 1985; seven life terms plus seven years, all consecutive, Consecutive to death sentence.

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes [XX] No. [_]

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in his proceeding.

Thomas J. Cotter
Signature of Attorney (if any)

Mary C. Kickham

I declare under penalty of perjury that the foregoing is true and correct. Executed on 12-7-88
(date)

Kenneth Lee Kenley
Signature of Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT

KENNETH L. KENLEY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No 88-2298-C-3
	)	
BILL M. ARMONTROUT,	)	
	)	
Respondent.	)	

GROUNDS UPON WHICH PETITIONER IS BEING HELD UNLAWFULLY - CAPITAL MURDER CONVICTION

Petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments were violated on the following grounds:

1. That trial counsel was ineffective at the punishment stage of petitioner's capital murder trial in that he failed to present any mitigating evidence on petitioner's behalf other than to read a stipulation of defendant's age.

2. That trial counsel was ineffective at the punishment stage of petitioner's capital murder trial in that he failed to present the

medical, psychological and psychiatric testimony and reports of psychiatric social worker, Louis Crownover, and child psychiatrist, Dr. Maria Manion, both of whom previously treated petitioner.

3. That trial counsel was ineffective in that he failed to challenge the psychiatric report prepared by Dr. Parwatikar in that it did not contain any reference to the reports prepared by Louis Crownover and Dr. Maria Manion, when counsel knew said reports had been provided to Dr. Parwatikar.

4. That trial counsel was ineffective in requesting the appointment of petitioner's capital murder, death penalty case, when he knew that he had been employed as an attorney for only three (3) months.

5. That trial counsel was ineffective in proceeding with the litigation of petitioner's capital murder, death penalty case, when he knew that at the time of trial, he had been a

licensed attorney for only nine (9) months, and had tried only one (1) previous jury trial.

6. That trial counsel was ineffective in that knowing of his legal and litigation inexperience, and knowing that the Public Defender of Butler County also had no previous experience in capital cases, he did not contact the Office of the State Public Defender for assistance on petitioner's case.

7. That trial counsel was ineffective in that he failed to request additional psychological and psychiatric evaluations of petitioner.

8. That trial counsel was ineffective in filing a waiver of an automatic change of venue in a highly-publicized case, and in failing to impress upon petitioner the necessity of changing venue.

9. That trial counsel was ineffective in conducting a cursory and ineffectual cross-examination of a handful of state's witnesses. Counsel asked a total of thirty-six (36) questions of twenty-six (26) state's witnesses.

10. That trial counsel was ineffective in failing to challenge the eyewitness identifications as presented by the state's witnesses.

11. That trial counsel was ineffective in failing to point out and argue inadequacies in the descriptions of various vehicles involved as presented by the state's witnesses.

12. That trial counsel was ineffective in failing to develop evidence militating against deliberation.

13. That trial counsel was ineffective in delivering a futile and perfunctory closing argument.

14. That trial counsel was ineffective in failing to object to the testimony of the decedent's widow, during the guilt/innocence stage of the trial, that the decedent had two children.

15. That trial counsel was ineffective in failing to object to testimony regarding numerous unrelated handguns in possession of petitioner.

16. That trial counsel was ineffective in failing to object to "other crimes evidence", in spite of the fact that th3e trial Court advised counsel when it was the appropriate time to object to said evidence.

17. That trial counsel was ineffective during voir dire in failing to question the jury panel on their views about the presumption of innocence and burden of proof.

18. That trial counsel was ineffective during voir dire in failing to question the jury panel whether they would automatically impose a sentence of death after finding of capital murder, i.e., trial counsel failed to "reverse Witherspoon".

19. That trial counsel was ineffective in failing to request the trial Court to "instruct down", i.e., to instruct the jury on all lessor [sic] included offenses supported by the evidence, to wit: first and second degree felony murder, and manslaughter.

20. The trial counsel was ineffective during the punishment stage of the trial in failing to submit and argue as a mitigating factor that petitioner had no significant history of prior criminal activity.

21. That trial counsel was ineffective in failing to give an opening statement in either stage of the trial[.]

22. That trial counsel was ineffective during voir dire in failing to attempt to rehabilitate jury panel members who had been disqualified as opponents of the death penalty.

23. That trial counsel was ineffective in that during the punishment stage of the trial, he failed to object to the prosecutor's argument which referred to a report which the prosecutor had read which indicated the death penalty was a deterrent to crime. Said report had not been admitted into evidence.

24. That trial counsel was ineffective in that he failed to request that the trial Court

poll the jurors after their return of a capital murder verdict.

25. That trial counsel was ineffective in that during his own closing argument in the punishment stage of the trial, he made a direct reference to petitioner's failure to testify.

26. That trial counsel was ineffective in failing to investigate the State's plea negotiations with state's witness Mr. Peal.

27. That trial counsel was ineffective in that he failed to investigate possible mitigating evidence at the punishment stage, and he failed to contact petitioner's relatives and friends regarding their testimony at the punishment stage.

28. That trial counsel was ineffective in that he failed to move for the exclusion of State's witness, Phyllis Felts, after learning that she was present in the courtroom during voir dire examination.

29. That trial counsel was ineffective in that he failed to move for the striking of the

testimony of the pathologist and the pathologist's report when it was discovered that the State had failed to comply with the rules of discovery by not providing defense counsel with a copy of the pathologist's report prior to trial.

30. That trial counsel failed to properly investigate the circumstances of Stat's witness, Lawrence Peal's, [sic] arrest in which he allegedly denied any knowledge of petitioner's possession of numerous handguns.

31. That trial counsel was ineffective in not requesting a mistrial, or in the alternative, not questioning a juror, when it was brought to the Court's attention in mid-trial that a juror may have known or been a neighbor of petitioner's mother. Trial counsel apparently relied on the word of a deputy sheriff that this revelation would have no bearing on the juror's ability to render a fair and impartial verdict.

32. That trial counsel was ineffective in failing to develop any theory of defense either in the presentation of evidence or in cross-examination of the State's evidence.

33. That trial counsel was ineffective in failing to investigate, obtain, review, and possibly present to the jury in the punishment stage of the trial, the facts and circumstances surrounding petitioner's prior admission to Farmington State Hospital.

34. That the cumulative effect of trial counsel's errors, as aforesaid, deprived petitioner of the right to effective assistance of counsel and the right to a fair trial in both the guilt/innocence stage and the punishment stage.

35. That the imposition of the death penalty against petitioner constitutes cruel and unusual punishment in violation of the rights secured by the Eighth Amendment of the United States Constitution and Article I, Section 21 of the Missouri Constitution; that the sentence of

death was imposed under the influence of passion, prejudice and other arbitrary factors; that the evidence adduced does not support the jury's finding of a statutory circumstance as enumerated in Subsection 2 of Section 565.032[,] R.S.Mo. 1983[,] and any other circumstance found; and the sentence of death imposed herein is excessive and disproportionate to the penalty imposed in similar cases, considering the crime, the strength of the evidence and the defendant.

PRAYER FOR RELIEF

WHEREFORE, the premises considered, petitioner prays for the following relief:

1. That this Court hold the sentence of death imposed upon petitioner and the conviction on which that sentence rests void and of no effect;

2. That the Court issue a writ of habeas corpus to have petitioner brought before it to the end that he may be discharged from his unconstitutional confinement and restraint and/or

relieved from his unconstitutional sentence of death;

3. That the Court conduct an evidentiary hearing at which evidence may be adduced to support the allegations contained in petitioner's Amended Petition;

4. That the Court enter an Order, pursuant to Rule 6 of the rules governing Title 28 U.S.C. Section 2254, that petitioner be entitled to invoke the processes of discovery available under the Federal Rules of Civil Procedure;

5. That the Court stay petitioner's execution pending final disposition of the Amended Petition, pursuant to Title 28 U.S.C. Section 2251. Said execution is presently scheduled for 12:01 a.m. on January 31, 1989; and

7. That the Court grant such other relief as may be appropriate.

Respectfully submitted,

Thomas C. Cotter

Thomas C. Cotter
100 North Broadway,

Suite 1600
St. Louis, Missouri 63102

OF COUNSEL:

ARMSTRONG, TEASDALE
KRAMER, VAUGHN &
SCHLAFLY

Mary C. Kickham
Mary C. Kickham
611 Olive Street,
Suite 1900
St. Louis, Missouri 63101
(314) 621-5070

ATTORNEYS FOR PETITIONER

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
_____ DIVISION

AMENDED PETITION - A

1. Name the location of court which entered the judgment of conviction under attack: Thirty-Sixth Judicial Circuit, Poplar Bluff, Butler County, Missouri, Hon. J. Holstein

2. Date of judgment of conviction: verdict November 14, 1984; sentencing January 14, 1985

3. Length of sentence: Seven life terms plus seven years, all consecutive. Consecutive to death sentence.

4. Nature of offense involved (all counts): Three counts robbery 1st degree, two counts kidnapping, 2 counts assault 1st degree, one count stealing a motor vehicle.

5. What was your plea? (Check one)

   (a) Not guilty [X]
   (b) Guilty [_]
   (c) Nolo Contendere [_]

If ~~you~~ entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____

6. Kind of trial: (Check one)

   (a) Jury [X]
   (b) Judge only [_]

7. Did you testify at the trial?

   Yes [_] No. [X]

8. Did you appeal from the judgment of conviction?

Yes [X] No. [_]

9. If you did appeal, answer the following:

(a) Name of court: Missouri Court of Appeals, Southern District Court
(b) Result: Judgment of conviction and sentence affirmed
(c) Date of result: November 26, 1985; 701 S.W.2d 185 (Mo.App. 1985)
(d) Grounds raised: Other crimes evidence, ineffective assistance of counsel
(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:
(1) Name of court: _____
(2) Result: _____
(3) Date of result and citation, if known: _____
(4) Grounds raised: _____
(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:
(1) Name of court: _____
(2) Result: _____
(3) Date of result and citation, if known: _____
(4) Grounds raised: _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to the judgment in any court, state or federal? Yes [X] No. [_]

11. If your answer to 10 was "yes," give the

following information:

(a) (1) Name of court: Thirty-sixth Judicial Circuit, Butler County, Missouri

(2) Nature of proceeding: Motion for Post-Conviction Relief, Rule 27.26 M.R.Cr.P.

(3) Grounds raised: Ineffective assistance of counsel

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes [X] No. [_]

(5) Result: Post-conviction relief denied

(6) Date of result: December 2, 1986

(b) As to any second petition, application or motion[,] give the same information:

(1) Name of court: _____
(2) Nature of proceeding: _____
(3) Grounds raised: _____
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes [_] No. [_]
(5) Result: _____
(6) Date of result: _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc.
Yes [X] No. [_]
(2) Second petition, etc.
Yes [_] No. [_]

(e) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not: _____

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional

grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to his conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
(b) Conviction obtained by use of coerced confession.
(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privilege against self-incrimination.
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Conviction obtained by a violation of the protection against double

jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

A. Ground one: See attached pages

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

_____

B. Ground two: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

_____

C. Ground three: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

_____

D. Ground four: _____

Supporting FACTS (tell your story *briefly* without citing cases or law): _____

_____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

14. Do you have any petition or appeal now pending in any court, either state or

federal, as to the judgment under attack?

Yes [_] No. [XX]

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: Mr. Perry Rhew, Office of the Prosecuting Attorney, P.O. Box 864, Kennett, Missouri 63857

(b) At arraignment and plea: Mr. Perry Rhew

(c) At trial: Mr. Perry Rhew

(d) At sentencing: Mr. Perry Rhew

(e) On appeal: Ms. C.J. Larkin, 209 B East Green Meadows Road, Columbia, Missouri 65203

(f) In any post-conviction proceeding: Mr. Gary Robbins, Office of the Public Defender, Courthouse, Jackson, Missouri 63755

(g) On appeal from any adverse ruling in a post-conviction proceeding: Mr. Henry B. Robertson, 1320 Market St., Room 62, St. Louis, Missouri 63103

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes [_] No. [X]

17. Do you have any future sentence to serve

after you complete the sentence imposed by the judgment under attack?

Yes [_] No. [_]

(a) Of so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: Previously received death penalty for capital murder conviction, which is subject of first part of this amended petition.

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes [_] No. [_]

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in his proceeding.

Thomas J. Cotter
Signature of Attorney (if any)

Mary C. Kickham

I declare under penalty of perjury that the foregoing is true and correct. Executed on 12-7-88
(date)

Kenneth Lee Kenley
Signature of Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT

KENNETH L. KENLEY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No 88-2298-C-3
	)	
BILL M. ARMONTROUT,	)	
	)	
Respondent.	)	

GROUNDS UPON WHICH PETITIONER IS BEING HELD UNLAWFULLY - ROBBERY, KIDNAPPING, ASSAULT AND STEALING CONVICTIONS

Petitioner's rights guaranteed by the Fourth, Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments were violated on the following grounds:

1. That trial counsel was ineffective in that he failed to request a severance of the charges arising out of incidents at the Kater Inn, the Blue Moon, and the Coachlight Motel. Each incident constituted a separate transaction, not linked by a common scheme or plan, each set of offenses was unnecessary to prove the others, and petitioner was prejudiced by

having the evidence of each transaction impermissibly bolstered by the evidence of the others.

2. That trial counsel was ineffective in that he conducted a totally meaningless voir dire consisting of six questions, which failed to include the jury panel's understanding of the presumption of innocence, burden of proof, the effect of the defendant's failure to testify and the ranges of punishment.

3. That the trial counsel was ineffective in failing to develop any theory of defense either in the presentation of evidence or in cross-examination of the state's witnesses.

4. That trial counsel was ineffective in that of the seventeen state witnesses, on cross-examination, counsel asked one question of one witness.

5. That trial counsel was ineffective in failing to object to numerous inadmissible hearsay statements, and other inadmissible evidence.

6. That trial counsel was ineffective in not requiring the trial Court to read MAI-CR2d 1.08 to the jury before each trial adjournment and recess.

7. That trial counsel was ineffective in that he failed to submit and request MAI-CR2d 3.60, which would have instructed the jury to limit their consideration of substantial evidence of other crimes.

8. That trial counsel was ineffective because he failed to submit and request any instructions be read to the jury on petitioner's behalf.

9. [T]hat trial counsel was ineffective in waiving closing argument.

10. That the acts and omissions of trial counsel amounted to the functional equivalent of a guilty plea. The record is devoid of any indication that petitioner knowingly and voluntarily waived his right to a jury trial.

11. That trial counsel was ineffective, and failed to avoid the appearance of

impropriety in appearing on behalf of petitioner at petitioner's sentencing when at the time, trial counsel was employed as an Assistant Prosecuting Attorney.

12. That the cumulative effect of trial counsel's errors, as aforesaid, deprived petitioner of the right to effective assistance of counsel and the right to a fair trial.

PRAYER FOR RELIEF

WHEREFORE, the premises considered, petitioner prays for the following relief:

1. That the Court issue a writ of habeas corpus to have petitioner brought before it to the end that he may be discharged from his unconstitutional confinement and restraint;

2. That the Court conduct an evidentiary hearing at which evidence may be adduced to support the allegations contained in petitioner's Amended Petition;

3. That the Court enter an Order, pursuant to Rule 6 of the rules governing Title 28 U.S.C. Section 2254, that petitioner be entitled

to invoke the processes of discovery available under the [F]ederal Rules of Civil Procedure;

4. That the Court enter an Order authorizing the prepayment to petitioner's counsel reasonable expense monies so that discovery may commence; and

5. That the Court stay petitioner's execution pending final disposition of the amended Petition, pursuant to Title 28 U.S.C. Section 2251. Said execution is presently scheduled for 12:01 a.m. on January 31, 1989; and

6. That the Court grant such other relief as may be appropriate.

Respectfully submitted,

Thomas C. Cotter
Thomas C. Cotter
100 North Broadway,
Suite 1600
St. Louis, Missouri 63102

OF COUNSEL:

ARMSTRONG, TEASDALE
KRAMER, VAUGHN &
SCHLAFLY

Mary C. Kickham
Mary C. Kickham
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Suite 1900
St. Louis, Missouri 63101
(314) 621-5070

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed, first class postage prepaid, on this 23rd day of December, 1988 to: William Webster, Attorney General, P.O. Box 899, Jefferson City, Missouri 65102.

Mary C. Kickham